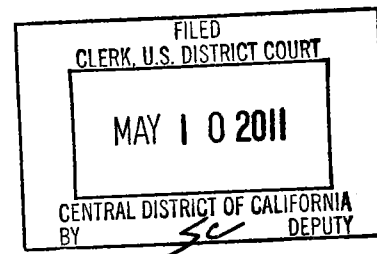
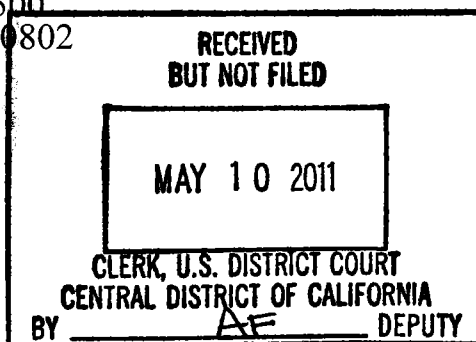


ORIGINAL

RIDOUT & LYON, LLP
 CHRISTOPHER P. RIDOUT (State Bar No. 143931)
 Email: c.ridout@ridoutlyonlaw.com
 DEVON M. LYON (State Bar No. 218293)
 Email: d.lyon@ridoutlyonlaw.com
 CALEB LH MARKER (State Bar No. 269721)
 Email: c.marker@ridoutlyonlaw.com
 555 E. Ocean Blvd., Ste. 500
 Long Beach, California 90802
 (562) 216-7380
 (562) 216-7385 Fax

Attorneys for Plaintiffs



UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

NORMA ROTHMAN, individually, and
 on behalf of all others similarly situated,

Plaintiff,

v.

BATH AND BODY WORKS, LLC a
 Delaware limited liability company, and
 DOES 1 – 10,

Defendants.

Case No.: 2:11-cv-03516-DDP-PJW

**FIRST AMENDED COMPLAINT
 (CLASS ACTION)**

For Violation Of:

1. California Civil Code § 1747.08

Plaintiff, Norma Rothman, brings this action by and through her undersigned counsel, on behalf of herself and all others similarly situated, based on information and belief and the investigation of counsel, except for information based on personal knowledge, hereby alleges as follows:

I. NATURE OF ACTION

1. This lawsuit is a class action brought by Plaintiff pursuant to Rule 23 of the Federal Rules of Civil Procedure against Defendants for violation of California Civil Code § 1747.08 (the “Song-Beverly Credit Card Act”). Specifically, Plaintiff

1 alleges that Defendants request and/or require its customers to provide personal
2 identification information when they complete a transaction using their credit card,
3 in violation of the Song-Beverly Credit Card Act.

4 **II. JURISDICTION AND VENUE**

5 2. This Court has jurisdiction pursuant to 28 U.S.C. 1332(d).

6 3. Venue is appropriate in this Court as a substantial part of the events and
7 conduct giving rise to the claims this action occurred in this Judicial District and
8 certain Defendants reside in, transact business with class members in, and maintain a
9 principal place of business in this Judicial District.

10 **III. PARTIES**

11 4. Plaintiff, Norma Rothman ("Plaintiff"), is and was at all times herein
12 mentioned an adult over the age of 21 years and residing in the County of Los
13 Angeles, State of California.

14 5. Defendant, Bath and Body Works, LLC ("Defendant") is and at all
15 times mentioned herein was a Delaware limited liability company doing business in
16 the State of California, with its corporate headquarters located at 7 Limited Parkway,
17 Reynolds, OH 43068. Defendant's agent for service of process is CT Corporation
18 System located at 818 W. 7th Street, Los Angeles, CA 90017.

19 6. Defendant, together with its subsidiaries, operates a chain of retail
20 stores. Defendant's stores sell a selection of fragrance products, including but not
21 limited to bath and shower, lotions and creams, personal fragrance, lip products,
22 skincare and treatment, aromatherapy and hand soaps. Defendants boast that their
23 products combine traditional spa treatments with botanical and natural ingredients to
24 develop a collection of advanced, easy-to-use personal care products with proven
25 effectiveness.

26 7. Plaintiff is ignorant of the true names and capacities of defendants sued
27 herein as DOES 1 through 10, inclusive, and each of them, and therefore sues said
28 defendants by such fictitious names. Plaintiff will amend this complaint to allege the

1 true names and capacities of said defendants when ascertained. Plaintiff is informed
2 and believes, and based thereon alleges that each of said fictitiously named
3 defendants acted intentionally, negligently, and/or recklessly or is responsible in
4 some manner for the occurrences herein alleged, and that each of the violations of
5 Plaintiff's rights as herein alleged were proximately and legally caused by said
6 defendants' actions.

7 8. Plaintiff is informed and believes, and based thereon alleges that all of
8 the defendants identified herein, whether identified by name or by fictitious name,
9 were and are the agents, servants, and employees of each of the remaining
10 defendants, and that in doing the things alleged herein were acting within the
11 purpose, course and scope of said agency, service, and/or employment and with the
12 permission, consent, authorization, and subsequent ratification of each of the
13 remaining defendants.

14 9. Plaintiff is informed and believes, and based thereon alleges that
15 Defendants, and each of them, agreed to, cooperated with, aided, abetted,
16 encouraged, ratified, and/or adopted the acts, actions, wrongdoing, and
17 representations of each of the remaining Defendants herein.

18 IV. CLASS ACTION ALLEGATIONS

19 10. This action is brought as a class action pursuant to Rule 23 of the
20 Federal Rules of Civil Procedure and any other applicable laws or rules of civil
21 procedure. In addition to statutory damages for Class Members, this action
22 seeks restitution arising from Defendant's credit card practices, such as the
23 disgorgement and recovery monies paid to Defendant by marketing
24 companies.

25 11. **Class Definition:** The Class sought to be represented in this action as
26 it relates to the is defined as follows:

27 All persons who engaged in a credit card transaction during the
28 last one (1) year at one of Defendant's retail stores located in the
State of California, and who was requested or required to provide

1 personal identification information at the time of the credit card
2 transaction (hereinafter, the "Class").

3 The Class Period dates back one (1) year (or the length of the longest
4 applicable statute of limitations for any claim asserted) from the date this action
5 was commenced and continues through the present and the date of judgment.
6 Excluded from the Class are: (a) any officers, directors or employees of Defendant;
7 (b) any judge assigned to hear this case (or spouse or family member of any
8 assigned judge); (c) any employee of the Court; (d) any juror selected to hear this
9 case.

10 12. The Class includes persons who:

- 11 a. have been requested, or required as a condition to the acceptance
12 of the credit card as payment in full or in part for goods or
13 services, to write personal identification information (as defined
14 in California Civil Code section 1747.08) upon the credit card
15 transaction form or otherwise; and/or
- 16 b. have been requested, or required as a condition to the acceptance
17 of the credit card as payment in full or in part for goods or
18 services, to provide personal identification information (as
19 defined in California Civil Code section 1747.08), which the
20 person, firm, partnership, association, or corporation accepting
21 the credit card has written, caused to be written, or otherwise
22 recorded upon the credit card transaction form or otherwise;
23 and/or
- 24 c. have been subject to Defendant's utilization of a credit card form
25 which contained preprinted spaces specifically designated for
26 filling in personal identification information (as defined in
27 California Civil Code section 1747.08).
- 28

1 **13. Numerosity of the Class.** Members of the class are so
2 numerous that their individual joinder herein is impracticable. The precise
3 number of members of the class and their addresses are presently unknown
4 to Plaintiff, but is believed to exceed 1,000 people. Defendant operates
5 numerous retail stores in the State of California, with each store serving
6 hundreds of customers per day. The precise number of persons in the class
7 and their identities and addresses may be ascertained from Defendant's
8 records. If deemed necessary by the Court, members of the class may be
9 notified of the pendency of this action by mail, supplemented by published
10 notice.

11 **14. Ascertainable Class.** The proposed Class is ascertainable. The
12 litigation of the questions of fact and law involved in this action will resolve the
13 rights of all members of the Class and hence, will have binding effect on all class
14 members. These Class Members can be readily identified from point-of-sale
15 computer files of Defendant and other means readily available to Defendant, and
16 thus the Plaintiff, through minimally intrusive discovery. The class is numerous.
17 Joinder of all class members is impracticable due to both a reluctance of class
18 members to sue Defendant and the relatively small monetary recovery for each
19 class member in comparison to the costs associated with separate litigation.

20 **15. Common Questions of Fact and Law Exist and Predominate**
21 **over Individual Issues.** There is a well-defined community of interest in
22 the questions of law and fact involved affecting the parties to be
23 represented. These common questions of law and fact exist as to all
24 members of the class and predominate over the questions affecting only
25 individual members of the class. These common legal and factual questions
26 include without limitation:
27
28

- a. Whether Defendant's conduct in requesting and/or requiring personal identification information from their customers violates California Civil Code § 1747.08; and
- b. Whether Defendant's conduct in providing credit card forms that contain preprinted spaces for filling in personal identification information violates California Civil Code § 1747.08.

16. **Typicality.** The claims of Plaintiff are typical of the claims of the Class. Plaintiff and all Class Members engaged in a credit card transaction at one of Defendant's California retail locations. Plaintiff and all Class Members were requested and/or required to provide personal identification information in violation of California law.

17. **Adequacy.** Plaintiff is an adequate representative of the Class on whose behalf this action is prosecuted. Plaintiff's interests do not conflict with the interests of the Class. Plaintiff has retained competent counsel with experience in class action litigation and will prosecute this action vigorously. As a result, Plaintiff can fairly and adequately represent and protect the interests of the class in that there are no conflicts between their interests and the interests of other class members, this action is not collusive, the named Plaintiff and her counsel have the necessary resources to litigate this action, and counsel has the experience and ability required to prosecute this case as a class action.

18. **Community of Interest.** The proposed Class has a well defined community of interest in the questions of fact and law to be litigated. The common questions of law and fact are predominant with respect to the liability issues, relief issues and anticipated affirmative defenses. The named Plaintiff has claims typical of the class members. There is a well-defined community of interest in the questions of law and fact involved affecting the plaintiff class in that the claims of all such class members relate to and arise out of a common scheme and practice

1 utilized by Defendant in credit card transactions by which said Defendant (1)
2 request and/or require personal identification information from their customers,
3 and/or (2) use credit card forms which contain preprinted spaces for filling in
4 personal identification information, all in violation of California Civil Code section
5 1747.08.

6 **19. Superiority of Class Adjudication.** The certification of a class in this
7 action is superior to the litigation of a multitude of cases by members of the
8 putative class. Class adjudication will conserve judicial resources and will avoid
9 the possibility of inconsistent rulings. Equity dictates that all persons who stand to
10 benefit from the relief sought herein should be subject to the lawsuit and hence
11 subject to an order spreading the costs of the litigation among the class members in
12 relationship to the benefits received. The statutory damages, restitution and
13 other potential recovery for each individual member of the class are modest,
14 relative to the substantial burden and expense of individual prosecution of
15 these claims. Given the amount of the individual class members' claims,
16 few, if any, class members could afford to seek legal redress individually for
17 the wrongs complained of herein. Even if the members of the class
18 themselves could afford individual litigation, the court system could not.
19 Individualized litigation presents a potential for inconsistent or contradictory
20 judgments. Individualized litigation increases the delay and expense to all
21 parties and the court system presented by the complex legal and factual
22 issues of the case. By contrast, the class action device presents far fewer
23 management difficulties, and provides the benefits of single adjudication,
24 economy of scale, and comprehensive supervision by a single court.

25 **20.** In the alternative, the above-referenced class may be certified
26 because:

- 27 a. The prosecution of separate actions by the individual
28 members of the class would create a risk of inconsistent or

1 varying adjudication with respect to individual class
2 members' claims which would establish incompatible
3 standards of conduct for Defendant; and

- 4 b. The prosecution of separate actions by individual members
5 of the class would create a risk of adjudications which
6 would as a practical matter be dispositive of the interests
7 of other members of the class who are not parties to the
8 adjudications, or which would substantially impair or
9 impede the ability of other class members to protect their
10 interests.

11 **V. FIRST CAUSE OF ACTION**

12 **VIOLATION OF CALIFORNIA CIVIL CODE SECTION 1747.08**

13 **(Against All Defendants)**

14 21. Plaintiff hereby incorporates all of the preceding paragraphs by
15 reference as if fully set forth herein.

16 22. During the Class Period, Plaintiff has purchased certain items from
17 Defendant by means of a credit card transaction. At the time of said purchases,
18 Defendant requested and/or required Plaintiff to provide her ZIP code, which
19 Defendant recorded as a part of processing the credit card transaction. As a result,
20 Plaintiff provided personal identification information to Defendant and Plaintiff is
21 informed and believes said Defendant recorded said information in their computer
22 and information systems all in violation of California Civil Code section 1747.08.

23 23. In the course of accepting credit card payments from Plaintiff and all
24 those similarly situated, Defendant has employed a pattern, scheme, practice and/or
25 policy relative to processing purchases whereby Defendant has requested and/or
26 required that purchasers provide personal information to Defendant as part of the
27 processing of the credit card transactions. Plaintiff is informed and believes and
28 based thereon alleges that Defendant has then caused all the personal identification

1 information to be otherwise recorded in Defendant's computer and information
2 systems.

3 24. California Civil Code section 1747.08(e) provides that any person who
4 violates its provisions shall be subject to a civil penalty not to exceed two hundred
5 fifty dollars (\$250.00) for the first violation and one thousand dollars (\$1,000.00) for
6 each subsequent violation. Accordingly, Plaintiff seeks an award to be determined at
7 time of trial in compliance with said provisions.

8 25. Plaintiff has incurred and, during the pendency of this action, will incur
9 expenses for attorney's fees and costs herein. Among other things, Plaintiff is
10 informed and believes, and based thereon alleges, that this action will result in the
11 enforcement of an important right affecting the public interest, that a significant
12 benefit will be conferred thereby upon the general public and/or a large class of
13 persons, that the necessity and financial burden of private enforcement are such as to
14 make a recovery of said fees and costs appropriate, and such fees should in the
15 interests of justice be paid by Defendant. Said attorney's fees and costs are necessary
16 for the prosecution of this action and will result in a benefit for each of the members
17 of the class. Plaintiff will seek to recover said attorneys' fees and costs according to
18 proof at the time of trial herein pursuant to law, including, but not limited to, the
19 provisions of Code of Civil Procedure section 1021.5 and otherwise.

20 **WHEREFORE**, Plaintiff prays judgment against Defendants, and each of
21 them, as follows:

22 1. For a Court order certifying that the action may be maintained as a
23 class action;

24 2. As to the First Cause of Action, for an award of a statutory penalty
25 pursuant to California Civil Code § 1747.08(e) for Plaintiff and for each person
26 similarly situated for each violation of Civil Code section 1747.08 in an amount to
27 be determined by the trier-of-fact at trial;
28

1 3. For reasonable attorneys' fees and costs as allowed by law according
2 to proof; and

3 4. For any and all such other and further relief as the Court may deem
4 just and proper.

5 Respectfully submitted,

6 RIDOUT & LYON, LLP

7 Dated: 5/9/11

8 By:

9 Christopher P. Ridout, CA Bar No. 143931

10 Devon M. Lyon, CA Bar No. 218293

11 Caleb LH Marker, CA Bar No. 269721

12 555 E. Ocean Boulevard, Suite 500

13 Long Beach, CA 90802

14 (562) 216-7380 Telephone

15 (562) 216-7385 Fax

16 **Attorneys for Plaintiffs**